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BY CM/ECF

The Honorable Mitchell S. Goldberg
United States District Court
Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse, Room 17614
601 Market Street
Philadelphia, PA 19106-1797

Re: *Arbutus Biopharma Corporation, et al. v. Moderna, Inc., et al.*,
C.A. No. 22-252-MSG (D. Del.)

Dear Judge Goldberg:

On July 20, 2022, Plaintiffs sent Defendants a draft proposed Scheduling Order (Exhibit A) and invited edits or discussion. Defendants declined to engage, citing their partial motion to dismiss as grounds for refusing to negotiate a schedule or proceed with discovery. See Exhibit B. Plaintiffs wrote Defendants again on July 28, 2022, and requested a Rule 26(f) conference. Defendants again refused, stating that they “see no need for a Rule 26(f) conference while Moderna’s motion is pending and before the Court has ordered a Rule 16 conference in light of the pending partial motion to dismiss.” See Exhibit B.

Defendants’ unwillingness to hold a Rule 26(f) conference is improper under both Federal Rule of Civil Procedure 26(f)(1)—which directs the parties to “confer as soon as practicable”—as well as under paragraph 2 of Your Honor’s Policies and Procedures guidelines regarding civil matters, which states that “[o]utstanding motions will not excuse counsel from timely holding” a Rule 26(f) conference “and submitting a Rule 26 plan.” See also *Grape Technology Group Inc. et al. v. Jingle Networks Inc.*, No. 08-cv-00408-GMS, Doc. No. 18 (D. Del. Jan. 13, 2009) (directing that “parties are not precluded from commencing and engaging in discovery prior to the court noticing and/or conducting a Rule 16/Local Rule 16.2(b) scheduling conference”) (attached as Exhibit C).

SHAW KELLER LLP

Letter to the Honorable Mitchell S. Goldberg

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Given Defendants' refusal to participate in the Rule 26(f) process, Plaintiffs respectfully request that Your Honor enter the attached Scheduling Order that Plaintiffs proposed (Exhibit A) or convene a Rule 16 conference.¹

Respectfully submitted,

/s/ John W. Shaw

John W. Shaw (No. 3362)

Enclosure

cc: Clerk of the Court (by CM/ECF and hand delivery)
All counsel of record (by CM/ECF and email)

¹ Plaintiffs served their identification of the accused products and their damages model on July 26 in accordance with this proposed schedule.